



U.S. Department of Justice

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January 29, 2024

Honorable Noel L. Hillman
United States District Judge
Mitchell H. Cohen Federal Courthouse
One John F. Gerry Plaza, Fourth & Cooper Streets
Camden, New Jersey 08101

Re: United States v. Zackary McFerren
Criminal No. 20-53 (NLH)
Criminal No. 16-190 (NLH)

Dear Judge Hillman:

I write requesting that the Court enter an Order authorizing the disclosure of the Pre-Sentence Investigation Reports (PSR) prepared in connection with the defendant's prior federal convictions. A proposed Order is attached hereto.

On April 14, 2016, Zackary McFerren appeared before the Honorable Jerome B. Simandle, then-Chief United States District Judge, and pled guilty to an Information charging him with possession of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and (b)(2) and transferring obscene material to a minor, in violation of 18 U.S.C. § 1470. Crim. No. 16-190, ECF 2, 6. On October 17, 2016, Chief Judge Simandle sentenced McFerren to 33 months incarceration followed by 5 years of Supervised Release. As a condition of Supervised Release, Chief Judge Simandle ordered McFerren to "register with the state sex offender registration agency in the State of New Jersey and any state where [he resides] or are employed, carry on a vocation, or are a student, as directed by the U.S. Probation Office." ECF 12 at 4. Subsequent to his release from custody, McFerren violated the terms of his Supervised Release by committing another federal crime and related violations. On April 16, 2021, Your Honor sentenced McFerren on that violation to an additional 24 months' incarceration followed by 10 years of Supervised Release. ECF 29.

On January 16, 2020, Zackary McFerren appeared before Your Honor and pled guilty to an Information which charged him with two counts of transferring

obscene material to a minor, in violation of 18 U.S.C. § 1470. Crim. No. 20-53, ECF 1, 5. On April 16, 2021, Your Honor sentenced McFerren to 33 months incarceration followed by 3 years of Supervised Release. As a condition of Supervised Release, Your Honor ordered McFerren to “register with the state sex offender registration agency in the State of New Jersey and any state where [he resides] or are employed, carry on a vocation, or are a student, as directed by the U.S. Probation Office.” ECF at 11.

The Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901 *et seq.*, defines what constitutes a sex offense and establishes a system of “tiers” that corresponds to the severity of a sex offender’s sex offense. SORNA defines a sex offender as an individual “convicted of a sex offense,” 42 U.S.C. § 16911(1), defines the term “sex offense,” 42 U.S.C. § 16911(5), (7), & (8), and requires sex offenders to register and keep their registrations current in jurisdictions where they reside, work, and are a student, 42 U.S.C. § 16913. How frequently and for how long a sex offender must appear in person to update a registration depends on the sex offender’s “tier.” 42 U.S.C. §§ 16915 & 16916. SORNA includes three tiers—tier I, tier II, and tier III—and a sex offender’s tier depends on the severity of his prior sex offense conviction. *See* 42 U.S.C. § 16911(2)-(4).

In New Jersey, the County Prosecutors are responsible to determine the level of risk of re-offense and placing the offender in a “tier” based upon that determination. N.J.S.A. 2C:7-8. The County Prosecutors are also charged with determining the scope of community notification. The decision is subject to judicial review in accordance with the procedures established by the Supreme Court of New Jersey. N.J.S.A. 2C:7-6 *et seq.*

Moreover, each Prosecutor's Office has a separate Megan's Law file for each registrant in which all information and documentation relied upon to reach the tier determination is kept. According to New Jersey law, for discovery purposes, this file is provided to a registrant’s counsel or to a *pro se* offender and shall be made available after receipt of the Application for Judicial Review. Records maintained pursuant to Megan’s Law shall be open to any law enforcement agency in New Jersey or any other state. N.J.S.A. 2C:7-5a.

In November 2023, the Camden County Prosecutor’s Office contacted this Office and advised that Zackary McFerren has registered as a sex offender in Camden County and that his registration currently is in Offender Watch status. The Prosecutor’s Office Megan’s Law unit requested various documents and reports, including any presentence reports, that they can use to open a Megan’s Law file on him and determine McFerren’s sex offender tier classification. Accordingly, the Government requests that the Court enter an order allowing disclosure of the Presentence Reports to the Camden County Prosecutor’s Office for this purpose.

If the proposed Order meets with Your Honor's approval, please execute the Order and have your deputy clerk file the original using the Court's Electronic Court Filing (ECF) System. Thank you for your consideration in this matter.

Respectfully,

PHILIP R. SELLINGER
United States Attorney

A handwritten signature in blue ink, appearing to read "Jason M. Richardson", is positioned above a horizontal line.

By: JASON M. RICHARDSON
Assistant United States Attorney

cc: John J. Zarych, Esq. (via ECF)